



October 6, 1999

Mr. James J. Savage  
Assistant County Attorney  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002-1700

OR99-2832

Dear Mr. Savage:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 129179.

The Harris County Attorney's Office ("Harris County") received a request for records concerning an injury that occurred on an elevator in a Harris County building on May 26, 1999. Specifically requested were: 1) maintenance records concerning the elevator in question; 2) complaints about lighting in and around the elevator; 3) statements made by Sue Day; and 4) medical records or bills relating to Sue Day.<sup>1</sup> You claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the requested information.

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). Harris County must meet both prongs of this test for information to be excepted

---

<sup>1</sup>You state that you will release Ms. Day's medical records "to her or her duly authorized representatives upon receipt of her signed authorization." See V.T.C.S. art. 4495b, § 5.08(h), (j).

under section 552.103(a).

To establish that litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 at 4 (1986). Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party.<sup>2</sup> Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 at 5 (1989) (litigation must be "realistically contemplated"). On the other hand, this office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982). Nor does the mere fact that an individual hires an attorney and alleges damages serve to establish that litigation is reasonably anticipated. Open Records Decision No. 361 at 2 (1983). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986).

You claim that litigation is reasonably anticipated due to the content of the letter requesting the submitted information. You point out that the letter was written by Ms. Day's attorney who "has been retained to pursue claims for personal injury and damages arising out of an incident." You also note that the letter's stated purpose is to provide "Notice of Claim for Damages under Tort Claims Act." You do not, however, represent that the letter is in compliance with the notice requirements of the Texas Tort Claims Act ("TTCA"), Civ. Prac. & Rem. Code ch. 101, or applicable municipal ordinance. *See* Open Records Decision No. 638 (1996) (fact that governmental body received claim letter that it represents to this office to be in compliance with notice requirements of TTCA or applicable municipal ordinance shows that litigation is reasonably anticipated). We note that neither the requestor nor the requestor's attorney acting in her behalf has specifically threatened to sue Harris County. *See* Open Records Decision No. 361 at 2 (1983). Nor have you indicated that Harris County would deny a claim resulting from the alleged incident. We conclude that you have failed to meet the requisite showing that litigation is reasonably anticipated and, therefore, you must release the information at issue.

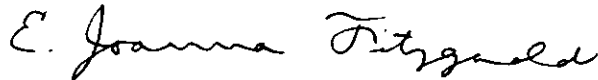
We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts

---

<sup>2</sup>In addition, this office has concluded that litigation was reasonably anticipated when the potential opposing party took the following objective steps toward litigation: filed a complaint with the Equal Employment Opportunity Commission, *see* Open Records Decision No. 336 (1982); hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); and threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981).

presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in cursive script that reads "E. Joanna Fitzgerald".

E. Joanna Fitzgerald  
Assistant Attorney General  
Open Records Division

EJF\nc

Ref: ID# 129179

Encl: Submitted documents

cc: Mr. Steve Waldman  
Grossman & Waldman, LLP  
Wedge International Tower  
1415 Louisiana, Ste 3800  
Houston, Texas 77002  
(w/o enclosures)